The previous chapters showed the complexities raised by the discussion on children’s bioethics. The paramount emphasis on children belonging to minority groups fails to grasp the broader picture in which all children belong, in one way or another, to a minority group. Although both scholastic and activist work on the national and international levels discuss the issue of harmful traditional practices (mainly in the context of girls), children as subjects are still practically excluded from the discourse. The focus remained only on the minority’s participation in the public sphere. Also when referring to the private one, children are presumed to be invisible and, often, merely those who need protection. Jack Donnelly’s effort to craft international criteria to distinguish between such traditional bodily practices that require acting upon versus others that do not is also problematic. It is inherently subjective and likely to follow the (Western) spirit alone.¹

Analyzing the specific rights of the child that are presumably violated, both the protective and the participatory (self-determination) approaches have been critiqued as being culturally insensitive or unable to give an accurate account of the experience of children. No alternative model to understand traditional bodily practices has been provided, although it has been mentioned it is rooted in cultural identities. In this vein, this chapter deconstructs the concept of rights in an effort to adjust it to the particular status of children. The argument advanced is that traditional bodily practices are integral to one’s culture and, hence, also fall within the scope of his or her cultural rights. In the context of children, the argument has to be understood in light of their rights to cultural identity.

To advance this argument, Sections A and B look at the concepts of culture, cultural rights, and cultural identity, and highlight some of the problems associated with their analysis. To what extent do biomedical practices fall within the scope of internationally recognized cultural rights? This is followed by the more specific investigation in Section C: even if biomedical practices are integral to one’s cultural rights, to what extent are they compatible with the child’s cultural rights? To answer that, one needs to consider the broader question whether children have rights. Examining leading scholastic theories on the issue, the section shows the role identity plays in the children’s exercise of their rights and ties it to children’s bioethics. Thus, in Section D, some of the scholarship concerning the child’s cultural identity, as well as the address

¹ See Chapter 4, Section B.2.b.
of the Monitoring Committee under the Children’s Convention (Children’s Committee or Committee), is discussed. Finally, Section E considers the implications of the child’s right to (biomedical) cultural identity for international law: how should biomedical/identity conflicts be translated into state policies and responsibilities?

A. CULTURE, CULTURAL RIGHTS, AND CULTURAL IDENTITY

The concepts of culture, cultural rights, and the right to cultural identity are elusive. Perhaps because “the cultural” is often a given, the need to explain, defend, and preserve it appears to be at odds. But cultures and the underlying derivatives of cultures are far more complex. As the boundaries between cultures and cultural identities are intrinsically a matter of an ongoing negotiation, it should thus come as no surprise that what counts under cultural rights, what cultural identity means, and especially what recognition of such rights would entail are all unclear.

The focus of the traditional study of culture on exotic and remote ways of life is partly responsible for this oversight. This concentration has, even if only obliquely, connected the concept of culture only with simple and presumably homogenous societies. Indeed, it was not until the last few decades when anthropologists, sociologists, and others realized that their culture should and could equally be the subject of study. The “cultural turn,” as it has been termed, clarified that, although invisible, the concept of culture applies to all human beings and to all societies.

Another reason for the peculiarity of the cultural turn has to do with the way in which rights are conceptualized. If being a rights holder means, at least, and as it has been traditionally understood under Western discourse of human rights, that another should not interfere with culture, formulating a concept of cultural rights and, all the more so, of a right to cultural identity, implicitly assumes that culture can be deprived. This, however, does not seem to resonate well with the nature of culture as a universal and most intrinsic feature of humanity. After all, culture is possibly what distinguishes human beings from animals, and, so, how can one be deprived of culture and cultural identity? This is a majoritarian approach, however, assuming that culture and cultural identity are something that one simply has. It is often not the case though for minorities who need to attest to their cultural rights and identity(ies). As policies to remove children belonging to indigenous groups from their homes during the 1950 and 1960s in various Western countries around the world


4 Kluckhohn and Kelly, 79.


6 The phenomenon of “stolen generation” was documented in Australia, Israel, and other countries.